



# SKAGIT COUNTY PUBLIC WORKS DEPARTMENT

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Department of Ecology  
Water Quality Program  
Municipal Stormwater Permits  
P.O. Box 47696  
Olympia, WA 98504-7696

## **RE: Comments on NPDES Western Washington Phase II Final Draft Permit**

To Whom It May Concern:

Skagit County appreciates the opportunity to comment on the Final Draft of the proposed National Pollutant Discharge Elimination System and State Waste Discharge General Permit for Discharges from Small Municipal Separate Storm Sewers in Western Washington.

We appreciate the hard work the Department of Ecology has put into this permit and into communicating with the effected jurisdictions. While we have substantial concerns about various elements, described below, we also believe the effort made by Ecology to involve stakeholders has resulted in a better permit than one produced with less local involvement. Hopefully this communication, and some additional improvements, will decrease the difficulty Ecology will have in implementing the permit and local governments will have in complying with it. Unfortunately, as currently written, we feel compliance will still be extremely challenging for many Permittees.

In addition to the detailed comments below, there are a few general areas of concern we feel must be addressed:

- **Staffing Requirements** - Implementing the ambitious program required by this permit will significantly impact the staff and budgets of small jurisdictions.
  - Skagit County, like other jurisdictions across the state, is facing an increasingly constrained budget. Complying with this permit will require a jurisdiction the size of Skagit County to hire a minimum of five new full-time employees.
  - In addition to increasing the responsibilities of existing staff, the management and implementation of this program will require these additional positions:
    - NPDES Program Coordinator / Manager
    - IDDE Coordinator (and enforcement staff)
    - Development Review / Site Inspectors
    - Operations Facility Inspectors
    - GIS / Survey staff
  - Bringing on additional staff in order to comply with this program will force significant cutbacks in other community services.
  - Without additional sources of State and Federal funds, many small jurisdictions will have absolutely no chance at funding the complete program required by this permit.

- This will make compliance unattainable for all but the most well funded jurisdictions, leaving the rest open to the very real possibility of litigation under the Clean Water Act.
- **Timeframe** – this permit requires that local jurisdictions adopt several new ordinances, programs, and enforcement policies in an unrealistic timeframe for many municipalities to comply with.
  - Local governments must follow public meeting requirements, address specific legal processes, and contend with budgetary constraints; forcing them to perform within this timeframe will inevitably cause localities to bypass or violate process requirements and will result in poorly developed programs.
  - An extension to the compliance schedule should be provided for in the permit and allowed at the request of the Permittee following review by Ecology.

#### **Special Condition 1 – PERMIT COVERAGE AREA AND PERMITTEES**

**S1. A.2. (page 5, line 11)** - For all counties required to obtain coverage under this Permit, the requirements of this Permit are applicable and shall be implemented throughout the urbanized area and the urban growth areas associated with cities within the urbanized areas which are under the jurisdictional control of the county.

There is no mention of Urban Growth Areas (UGAs) in either the EPA or Ecology's definition of a regulated MS4. Most UGAs extend beyond the census defined urbanized areas. Ecology appears to have unilaterally stretched the geographical area required to be regulated under this permit. Ecology should not be expanding this permit beyond what is required by EPA and the Clean Water Act.

**Suggested language: Delete** “and the urban growth areas associated with cities within the urbanized areas which are under the jurisdictional control of the county”.

#### **Special Condition 2 – AUTHORIZED DISCHARGES**

**S2. C. (page 10, line 12)** - This permit authorizes discharges from emergency fire fighting activities unless the discharges from fire fighting activities are identified as significant sources of pollutants to waters of the State.

The federal Clean Water Act was never intended to regulate life-saving activities. The flows from nearly every large commercial or residential fire fight will contain significant pollutants. Including language placing limits on emergency actions immediately creates a situation where public health and safety is compromised in order to meet the standards of the Clean Water Act. This puts elected officials in a precarious position and we question whether this meets the intent of the Clean Water Act. This permit needs to flatly state that fire fighting activities are authorized, without exception.

**Suggested language: Delete** “unless the discharges from fire fighting activities are identified as significant sources of pollutants to waters of the State”

#### **Special Condition 4 – COMPLIANCE WITH STANDARDS**

**S4. E. (page 11, line 18)** - In order to meet the goals of the Clean Water Act, to demonstrate compliance with S4.C and S4.D and make progress towards compliance with applicable surface water, ground water and sediment management standards, each Permittee shall comply with the requirements of this Permit.

This is an important statement and we would like to see it stated as clearly as possible.

**Suggested language: Replace condition with** “The Permittee will have met the goals of the requirement of using best management practices (BMPs) to the maximum extent practicable (MEP) using all known and reasonable technologies (AKART) and met the goals of the Clean Water Act by fulfilling the terms and conditions of this permit.”

**S4. F. (page 11, line 22)** - Ecology may modify or revoke and reissue this General Permit in accordance with General Condition G14, if Ecology becomes aware of additional control measures, management practices or other actions beyond what is required in this Permit that are necessary to:

While the above language may be appropriate for legal reasons, it could have unintended consequences that were not considered during the development of the locality’s SWMP. Jurisdictions require consistency and certainty that permit requirements will be apparent and predictable, and not changed during the permit period.

**Suggested language: Modify** Examples of more appropriate language that would offer increased certainty to the Permittees could be the insertion of the phrase “...at the time of permit renewal...” or “...when new best available science (BAS) is incorporated into Ecology’s stormwater manual and adopted by the Permittee”

#### **Special Condition 5 – STORMWATER MANAGEMENT PROGRAM**

**S5. A.3. (page 12, line 14)** - The SWMP shall include an ongoing program for gathering, maintaining, and using information to track SWMP development and implementation, evaluate permit compliance/non-compliance and determine the effectiveness of the SWMP implementation.

It is our opinion that it is the responsibility of Ecology, not the applicant, to determine if a Permittee is in compliance. Additionally, language should be included in this permit affirming Ecology will be reviewing each annual report and providing all conforming Permittees with official documentation of their compliance. The protection from litigation that compliance provides is, after all, the biggest incentive offered to jurisdictions to obey this mandate. Given the significant commitment of local resources required to comply with this mandate, we feel Ecology should provide successful Permittees with letters indicating full compliance.

**Suggested language: Delete** “evaluate permit compliance/non compliance.” **Include** – Language committing Ecology to awarding “certificate of compliance”.

**S5. A.3.a. (page 12, line 18)** - Each Permittee shall track the cost of development and implementation of the SWMP. This information shall be included in the Annual Report required by this Permit.

Tracking and reporting program expenditures appears to be an unnecessary administrative task. Dollars expended indicates neither program effectiveness nor efficiency, it only represents the amount of money spent. Many counties have activities occurring both in areas subject to this permit and areas outside the scope of this permit. To segregate their tracking and accounting systems in order to report costs of development and implementation to Ecology is a considerable burden. Other local programs, outside of a stormwater utility, may be providing services not easily tracked or reported. The numbers reported are unlikely to capture all that could and should be reported as costs of compliance, as well as having significant variability due to the various accounting systems used by local jurisdictions. There is no single method for calculating the cost of preventing pollution by not performing an action, such as not using pesticides in the right-of-way.

Finally, it is difficult to convey increased efficiencies; reduced expenditures inevitably can be presented as backsliding. This information will require a significant amount of effort to generate and will be of little evaluative value.

All this said, we understand the requirement arises from federal regulations and therefore cannot be deleted wholesale by Ecology.

**Suggested language:** *Include* simple criteria for counting each cost Ecology wants tracked. That way, separate jurisdictions do not have to develop new methodology and Ecology will receive reports of costs generated by a consistent method from each Permittee.

**S5. C.3.b.vi. (page 17, line 1)** - The SWMP must further address any category of discharges in i or ii above if the discharges are identified as significant sources of pollutants to waters of the State.

Who decides what a “significant source of pollutants” is? Ecology? The Permittee?

**Suggested language:** *Define* who has responsibility to identify significant sources of pollutants.

**A note:** We greatly appreciate Ecology’s effort in rewriting this section of the permit. The language concerning what does and does not need to be prohibited is significantly clearer in this permit than in the earlier draft.

**S5. C.3.c.ii. (page 17, line 28)** Screening for illicit connections shall be conducted using: *Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments*, Center for Watershed Protection, October 2004, or other comparable methodology.

This guidance manual is far more expansive in scope and nature than just providing a clear metrological approach to screenings for illicit connections. This 181-page manual implies the need for yet another new ordinance not otherwise mentioned in the permit.

**Suggested language:** *Specify* which sections of the IDDE manual are required. Perhaps just Chapter 11: The Outfall Reconnaissance Inventory (ORI).

**S5. C.3.c.v. (page 18, line 12)** Compliance with this provision shall be achieved by: initiating an investigation within 21 days of a report or discovery of a suspected illicit connection to determine the source of the connection, the nature and volume of discharge through the connection, and the party responsible for the connection. Upon confirmation of the illicit nature of a storm drain connection, termination of the connection within 180 days must be ensured using enforcement authority as needed.

Ensuring termination within 180 days of confirmation of illicit connections may not always be possible since construction of alternatives, such as sanitary sewer extensions, may be required and since the enforcement process could easily be extended beyond six months due to appeals, or environmental permits may be required that restrict construction to a “fish window”.

**Suggested language:** *Modify* “Upon confirmation of the illicit nature of a storm drain connection to the municipal storm sewer, Permittees shall take timely action to remove the connection in accordance with the local code of the Permittee”.

**S5. C.4.a.ii. (page 20, line 6) (and other references to the 2005 manual)** Permittees who choose to use the site planning process and BMP selection and design criteria in the 2005 Stormwater Management Manual for Western Washington, or an equivalent manual approved by the

Department under the Phase I Permit, may cite this choice as their sole documentation to meet this requirement.

This permit does not explicitly require that local jurisdictions adopt the 2005 Stormwater Manual, but it will be impractical to comply with the permit without doing so. This is contrary to Ecology's long stated determination that the manual is not a regulatory instrument, but is intended for guidance only. The manual contains a number of conditions that are of serious concern to jurisdictions. For example, it classifies maintenance actions on already impervious surfaces, including roads, as redevelopment. Changing from an already impervious surface (chip seal, e.g.) to a different type of impervious surface (e.g. asphalt) would be regulated as if it were a new impervious surface. This is not scientifically defensible. It requires development (and redevelopment) projects to mitigate flows to a forested predevelopment condition. In urban areas, the high cost of stormwater retrofitting will place a very large disincentive on redevelopment and consequent pressure to push into rural areas where parcels are larger and less expensive to accommodate detention facilities. This is counter to the goal of GMA; to concentrate development into existing urban areas. A goal we assume Ecology shares. Requiring this higher standard (2005 manual) only in the urbanized areas leaves the county ripe for litigation from developers crying foul at a double standard. Jurisdictions have learned the hard way that if a burden is to be placed on development, it must be consistent throughout the jurisdiction. The scope of NPDES is to require permits for discharge of "pollutants". There is no reference in the EPA permit to controlling flow rates, volumes, or many of the other technical features that are contained in this 976-page manual.

***Suggested language:*** *Specify* Permittees should not be required to adopt the entire 2005 Stormwater Management Manual for Western Washington by reference alone. Ecology must ensure wherever the Permittee is directed to the Stormwater manual, the language includes only the relevant sections of the manual, and not the recommended sections or appendices.

**S5. C.5.a. (page 23, line 4)** Adoption of maintenance standards that are as protective, or more protective, of facility function as those specified in Chapter 4 of Volume V of the 2005 Stormwater Management Manual for Western Washington. The facility-specific maintenance standards are conditions for determining if maintenance actions related to facility function are required as identified through inspection. They are not a measure of the facility's required condition at all times between inspections. Exceeding the maintenance standards between inspections and/or maintenance does not automatically constitute a violation of these standards. However, based upon inspection observations, the inspection and maintenance schedules shall be adjusted to minimize the length of time that a facility is in a condition that requires a maintenance action. These standards are violated when an inspection identifies a required maintenance action related to facility function, and that action is not performed within 6 months for typical maintenance, within 9 months for re-vegetation, and within 2 years for maintenance that requires capital construction of less than \$25,000.

The 6-month timeframe for requirement of maintenance performance as a result of inspection findings is far too restrictive. Skagit County performs many inspections in winter and early spring, but most of the maintenance work occurs in the summer. This is due to equipment availability (vector trucks are busy with flooding in winter), to the nature of the work, which requires dry ground or non-flowing water, and to our permits, including HPA and grading permits, which limit work to certain seasons. We would not want a specific deadline for maintenance work that would require us to work outside our permits or perform work that would have a greater chance of triggering erosion or other pollution problems. In addition, any capital work, even less than \$25,000, usually requires more

than one year to design, obtain proper permits, and hire contractors. The annual budget is finalized at least one year before construction season.

**Suggested language: Modify** “within 12 months for typical maintenance, 12 months for revegetation, and 24 months for maintenance requiring capital construction”.

#### **Special Condition 8 – MONITORING**

##### **S8. C.1.c. (page 35, line 14) Runoff treatment Best Management Practice (BMP) effectiveness monitoring**

The BMPs in question come directly out of Ecology’s own manual. Ecology maintains their manual is Best Available Science. Best Available Science implies you know the techniques work. Any BMP required in Ecology’s manual are assumed to be effective. If they’re not, they shouldn’t be required in the first place.

**Suggested language: Specify** Asking individual local governments to undertake comprehensive, thorough effectiveness monitoring of the dozens of possible BMPs will be a huge undertaking for each jurisdiction. It is our opinion that this responsibility falls to Ecology. If testing is to be done on the BMPs from Ecology’s own manual then Ecology should consider providing funding, staff and support for a qualified monitoring program.

#### **APPENDIX 1 –Minimal Technical Requirements for New Development and Redevelopment**

It appears that Appendix 1 was cut and pasted from the 2005 manual. It still contains references to sections of the manual that are not included in the Appendix. Page 3 under Maintenance refers to Section 2.2. There is no section 2.2 in the Appendix. Page 5 under Source Control refers to Volume IV, and so on. We recommend a thorough review of this appendix to make it a stand-alone document.

**Suggested language: Specify** Appendix I of this permit needs to be reviewed to ensure all parts referenced in the text body are relevant to the permit and contained within the appendix itself, not somewhere else in the Stormwater manual.

We wish to express our thanks and appreciation for the opportunity for this review. We look forward to working with you on the implementation of this permit in a way that provides protection to the environment and is attainable by local governments.

Sincerely,

David R. Brookings  
Natural Resources Division Manager

DRB/ea:djm